

1 | can do is, is cover it with a brief pleading requesting that  
2 | the document be identified as, I guess, Joint Exhibit 2 and  
3 | then received. And if -- and whoever does the work, if, if  
4 | you get the consent of the other two Parties, you don't need  
5 | all three signatures. I mean, Mr. Honig, you, you agree  
6 | that --

7 |           MR. HONIG: I'll, I'll consent now.

8 |           JUDGE STEINBERG: Okay.

9 |           MR. HONIG: And --

10 |          JUDGE STEINBERG: And, and Mr. Zauner will also?

11 |          MR. ZAUNER: Yes.

12 |          JUDGE STEINBERG: Okay. So, when, when I get a copy  
13 | of -- I mean, I could -- I, I, I can't receive it now because  
14 | I don't have it -- but I will receive it.

15 |          MS. SCHMELTZER: My understanding is that Mr. Horton  
16 | believes there are only a few typographical --

17 |          JUDGE STEINBERG: Okay.

18 |          MS. SCHMELTZER: -- errors.

19 |          JUDGE STEINBERG: Okay. Now, let's turn to Mr.  
20 | Honig. And there were a number of exhibits that were still  
21 | outstanding. There were a couple that you wanted to add.  
22 | Which do you want to do first?

23 |          MR. HONIG: Let me do the outstanding ones first,  
24 | Your Honor.

25 |          JUDGE STEINBERG: Okay.

1 MR. HONIG: And I'll try and do those in chronolog-  
2 ical order.

3 JUDGE STEINBERG: Numerical, you mean?

4 MR. HONIG: Not -- or in numerical order, rather.  
5 The first one is NAACP Exhibit 21, which is described in  
6 Judge's Exhibit 2, page 2, and I, and I move NAACP 21 into  
7 evidence.

8 JUDGE STEINBERG: Okay. I'll, I'll read this  
9 description a little more carefully. I mean --

10 MR. HONIG: It may require a little bit of  
11 explanation.

12 JUDGE STEINBERG: Wait. Wait, wait, wait. Okay.  
13 Now, the -- you've circled the stations that are commercial  
14 classical stations and is listed in Broadcasting and Cable  
15 Yearbook?

16 MR. HONIG: Yes.

17 JUDGE STEINBERG: Okay.

18 MR. HONIG: And --

19 JUDGE STEINBERG: Okay. And you're moving it in?

20 MR. HONIG: Yes. Do you need an explanation of it?

21 JUDGE STEINBERG: Okay. If you wish.

22 MR. HONIG: Sure.

23 JUDGE STEINBERG: I mean, Mr. -- I hear Mr. Zaragoza  
24 saying yes.

25 MR. HONIG: Yeah.

1 JUDGE STEINBERG: And, so, I guess the Licensee  
2 wants an explanation.

3 MR. HONIG: Yeah.

4 JUDGE STEINBERG: Include in the explanation the,  
5 the purpose for which --

6 MR. HONIG: Sure.

7 JUDGE STEINBERG: -- the thing is offered.

8 MR. HONIG: Yeah. This -- first let me explain what  
9 these are. These are pages that are actually drawn from a  
10 Commission publication. And while we could simply cite the  
11 publication in our Findings, the publication is, is, is, is  
12 not widely distributed. I don't think the EEO Branch makes  
13 more than about 10 copies and disseminates them to the public.  
14 I have a complete set and there may be a few other complete  
15 sets outstanding, but it's not a widely distributed document.  
16 So, I thought that for the convenience of the Court and the  
17 Parties I ought to pull the, the relevant pages.

18 This consists of those pages of the Commission's --  
19 it's actually an annual database that they do which their EEO  
20 Specialists prepare from all of the Form 95's -- 395's for  
21 stations -- and for radio and television stations in the  
22 country. It is intended to contain the data for each of those  
23 years for all of the, the stations which are generally compa-  
24 rable to KFUD in the sense that these are commercial classical  
25 stations in, in markets where there is -- which have more than

1 five full-time employees that are located in markets with a  
2 work-force representation of Blacks which was over 5 percent  
3 in 1980. The -- we did not put in the census data because  
4 that's widely available and it can be found and cited to and  
5 so on.

6 It is intended to support Findings which would show  
7 the extent to which over the entire license term these sta-  
8 tions in hearing here have had a minority hiring record which  
9 diverges from that of other comparable stations. Inasmuch as  
10 the argument has been made that it's -- that the commercial  
11 classical format is specialized, Ms. Cranberg testified about  
12 that, it state -- it's mentioned on page -- written page 44 of  
13 the 1992 letter, and it is a major defense, the best evidence  
14 of -- that would be used to test that assertion is, is the  
15 data itself for comparable stations.

16 There was also testimony from Mr. Cleary going to --  
17 who represents several of the -- I think perhaps all or most  
18 of these stations -- going to what's normative in the industry  
19 as a whole, and it's offered to rebut that testimony as well.

20 JUDGE STEINBERG: Mrs. Schmeltzer?

21 MS. SCHMELTZER: Yes. Your Honor, Mr. Honig just  
22 described this exhibit as containing all the radio stations in  
23 the United States. Someone -- I don't know who --

24 JUDGE STEINBERG: Okay. No. All the radio stations  
25 in the United States operating to commercial classical

1 stations --

2 MS. SCHMELTZER: Well, no, I don't believe that's  
3 correct, because certain stations are circled --

4 JUDGE STEINBERG: Oh, well, he circled -- no, but,  
5 but I asked him, I asked him did you circle the commercial  
6 classicals, and he said yes.

7 MR. HONIG: I should add, Your Honor, that where  
8 there was a station in an AM/FM combination, where for example  
9 the FM was commercial classical and the AM was oldies and we  
10 can't attribute which went to which, I left those out.

11 JUDGE STEINBERG: Okay. That -- I mean, my, my  
12 understanding was that we were only interested in the, in the  
13 circled ones.

14 MR. HONIG: That's right.

15 JUDGE STEINBERG: Okay. And the rest -- who cares  
16 about?

17 MR. HONIG: That's right.

18 MS. SCHMELTZER: Number one, on my exhibit I cannot  
19 read everything that's circled. It's very difficult to read.

20 Number two, we don't have a witness who's competent  
21 here to testify as to whether these are really commercial  
22 classical stations.

23 Number three, KFUE was noncommercial for part of  
24 1983 and from '83 to 1986 KFUE did not hire any Sales employ-  
25 ees. It used Concert Music Broadcast Services.

1           Furthermore, the Commission has an independent  
2 processing standard for EEO purposes. It does not evaluate  
3 licensees vis-a-vis stations throughout the country or in  
4 other markets. Each market is different and each station is  
5 different, and the Commission evaluates them individually.

6           And, finally, our station is -- there is -- it is an  
7 AM/FM station and we share staff, and so that's an important  
8 element as well.

9           For all of those reasons, I think that there's no  
10 competent witness. This is an -- a totally irrelevant exhibit  
11 and it's not material or probative.

12           JUDGE STEINBERG: Ms. -- Mr. Zauner or Ms. Laden?

13           MR. ZAUNER: Your Honor, the Bureau has no objection  
14 to the admission of this testimony. As to the argument that  
15 we're not -- we don't have a witness here to verify that the  
16 circled stations are in fact classical commercial stations, I,  
17 I think that it's easy enough for us to check if there is any  
18 question about any, any particular station.

19           Also, I notice that Mr. Honig has stated a basis for  
20 submitting this information and that's rebuttal to some of the  
21 arguments that were made in statements submitted by witnesses  
22 on behalf of the Church. It's not, not offered directly for  
23 comparison purposes but rather to rebut statements made by  
24 them.

25           MS. SCHMELTZER: Your --

1 MR. ZAUNER: I think that, that it is relevant to a  
2 showing that other classical commercial stations have hired  
3 blacks and minorities for positions at the station. We don't  
4 object to its admission.

5 JUDGE STEINBERG: Okay. Mrs. Schmeltzer forgot one  
6 more argument, and that it is that --

7 MS. SCHMELTZER: Your Honor --

8 JUDGE STEINBERG: -- that the data in here is, is --

9 MS. SCHMELTZER: The data in here --

10 JUDGE STEINBERG: -- is a two-week snapshot, and  
11 it --

12 MS. SCHMELTZER: Well, that's right.

13 JUDGE STEINBERG: And --

14 MS. SCHMELTZER: And it could be a different --  
15 yeah, but --

16 JUDGE STEINBERG: Okay. Let me just --

17 MS. SCHMELTZER: No, but I have another argument --

18 JUDGE STEINBERG: Okay.

19 MS. SCHMELTZER: -- which is that we're talking  
20 about a seven-year license renewal period here. It would be  
21 highly unusual if none of these stations changed management  
22 during that period of time, may have even changed format  
23 during that period of time. So, without a competent witness I  
24 just think this exhibit is meaningless.

25 MR. ZAUNER: Your Honor, we'd note that, that there

1 are individual reports for each year going through the license  
2 period.

3 JUDGE STEINBERG: Okay. Here's the -- this, this  
4 isn't a -- this is a, a document that's put out by the FCC and  
5 is a public record. Is that correct?

6 MR. ZAUNER: Yes.

7 JUDGE STEINBERG: I will receive the exhibit for  
8 official notice purposes. What -- if you use the data in  
9 here, then Mrs. Schmeltzer can raise the arguments that I  
10 shouldn't give any weight to it for the various reasons that  
11 she's enumerated, but I think, I think the better course of  
12 action -- it's an official document of the Commission and I  
13 think I, I should receive it for official notice purposes.  
14 So, Exhibit 21 is received.

15 (Whereupon, the document marked for  
16 identification as NAACP Exhibit  
17 No. 21 was received into evidence.)

18 JUDGE STEINBERG: Or another way of saying it, I can  
19 -- you know, I'll take official notice of it.

20 MR. HONIG: Okay.

21 JUDGE STEINBERG: But it's, it's in here and it is  
22 received for that purpose.

23 MR. HONIG: The next exhibit is NAACP Exhibit 57. I  
24 asked questions about it. I did not move it. And I'm -- and  
25 consequently I'm going to withdraw it.

1 JUDGE STEINBERG: Okay. Let me get to it.

2 MR. HONIG: Okay. I'm going to withdraw 57.

3 JUDGE STEINBERG: Okay. Exhibit 57 is withdrawn.

4 (Whereupon, the document marked for  
5 identification as NAACP Exhibit  
6 No. 57 was withdrawn.)

7 MR. HONIG: Okay. The next one --

8 MS. SCHMELTZER: Your Honor, just -- excuse -- may  
9 we have one --

10 JUDGE STEINBERG: Yes. Are we ready, Ms.  
11 Schmeltzer?

12 MS. SCHMELTZER: Yes. Thank you.

13 MR. HONIG: The next one is 60, but I'm going to  
14 treat 60 a little differently, and I'd like to go to 61 next.  
15 61 is identified in Judge's Exhibit 2, page 4, and if Your  
16 Honor would like I can provide a few words of explanation of  
17 what it is.

18 JUDGE STEINBERG: Please do.

19 MR. HONIG: These are, I believe, all of the columns  
20 by Brenda Jones in the St. Louis American, which is an  
21 African-American newspaper in St. Louis. The name of the  
22 column is "Classically Black," and the column describes and  
23 discusses the activities and, and achievements of Blacks in  
24 St. Louis in classical music. And, and it, it is offered for  
25 the purpose of showing that there is indeed substantial

1 interest and -- of a very diverse and broad scope in St. Louis  
2 among Blacks in classical music. Since that was a defense  
3 that was made -- that was stated in the Opposition to the  
4 Petition to Deny that not very many Blacks were interested in  
5 classical music, this is offered as specific rebuttal to that  
6 statement and it's offered for that purpose.

7 MS. SCHMELTZER: Objection, Your Honor. All of  
8 these materials, which are classic hearsay, pertain to the  
9 '93-'94 season, and it's way outside the license renewal  
10 period.

11 MR. HONIG: Your Honor, unless we're to assume that  
12 some, some -- that between 1990 and 1993 the Black community  
13 in St. Louis suddenly woke up to its interest in classical  
14 music, the, the, the objection wouldn't have any merit.

15 It's not offered for the, for the details in the  
16 articles, just as a showing of, of, of -- and, by the way, I  
17 might mention that many of the statements though, if you want  
18 to look at the details, do show that, that during the license  
19 term there was a lot of interest, but I hadn't really, you  
20 know, intended to offer it for that purpose. But if it will  
21 clean up the objection, I can do that.

22 MR. ZAUNER: Your Honor, the Bureau has no objection  
23 to the admission of this exhibit for the limited purpose that  
24 counsel has indicated that he's offering it, namely, to show  
25 that there is an interest in classical music among the Black

1 population in St. Louis.

2 JUDGE STEINBERG: Okay.

3 MS. SCHMELTZER: It's way outside the license term.

4 JUDGE STEINBERG: Tell me what specific statement

5 and what specific document this rebuts.

6 MR. HONIG: It rebuts the statement in the --

7 JUDGE STEINBERG: Go through your exhibits and give

8 me a --

9 MR. HONIG: A citation.

10 JUDGE STEINBERG: -- an exhibit number and a page.

11 MR. HONIG: All right. Tab 7, Church Exhibit 4,

12 page --

13 JUDGE STEINBERG: Stamped 12?

14 MR. HONIG: Stamped -- well, stamped 15 also.

15 JUDGE STEINBERG: Okay. But it's stamped 12? Now

16 -- where on stamped 12?

17 MR. HONIG: No, that's not it. It's --

18 JUDGE STEINBERG: Okay.

19 MR. HONIG: -- stamped 15 and -- yeah -- and stamped

20 16.

21 JUDGE STEINBERG: Where on 15?

22 MR. HONIG: One measure of the popularity of KFUD is

23 the -- is a popular -- one, one measure of classical music

24 training among members of minority groups is the popularity of

25 KFUD, and there are statistics given about the number of

1 | listeners --

2 | JUDGE STEINBERG: In October and November 1988?

3 | MR. HONIG: Yeah, of listeners. And then the, and  
4 | then the statement is made, "Figures as to persons in the  
5 | labor market with expertise as opposed to simply interest  
6 | would of course be even lower." And "There is but a small  
7 | population of minority persons in the St. Louis area..." or --

8 | JUDGE STEINBERG: Where's the small, where's the  
9 | small percentage language?

10 | MR. HONIG: At the very bottom, second and -- last  
11 | -- to the last line. "...who possessed the qualifications..."

12 | JUDGE STEINBERG: Okay. Is that the language?

13 | MR. HONIG: That's the language.

14 | JUDGE STEINBERG: Okay. Now, point to me, please,  
15 | in Exhibit 61 where it rebuts the statement that "only 3.7  
16 | percent of KFUD's (sic) -- KFUD-FM's 72,800 listeners..or  
17 | 2,693..were black." Point to me where in Exhibit No. 61 it  
18 | rebuts the sentence that "...a small number of minority per-  
19 | sons in the St. Louis SMSA..or for that matter nationwide..who  
20 | possess the qualifications KFUD requires for nearly every job  
21 | position at the station."

22 | I mean, we're not -- this doesn't -- 2,693 people,  
23 | if, if there's a statement in Exhibit 61 that's --

24 | MR. HONIG: Well, let me --

25 | JUDGE STEINBERG: Wait a minute. Wait a minute.

1 Does it say anything in, in Exhibit 61 that during license  
2 term the number was 10,000 and, and the, and the statement can  
3 be reliable, then I would say that it rebuts the statement.  
4 If there's a statement in Exhibit 61 which goes to the, the  
5 qualifications of minorities for jobs at radio -- at classical  
6 music radio stations, then it rebuts the statement.

7 But I, I view this as -- number one, Mrs. Schmeltzer  
8 is right. These articles -- the, the first one is September  
9 1993 and they seem to go on from there, which is three years  
10 beyond the license term. And number -- you know, that's  
11 number one.

12 And, number two, this seems to be the type of broad,  
13 general statement rebuttal material that I rejected in  
14 Exhibits, I think it was, 1, 2, 3, and 4 as not, as not appro-  
15 priate rebuttal.

16 MR. HONIG: Let me, let me --

17 JUDGE STEINBERG: All right. You can respond to  
18 that and then I'll rule.

19 MR. HONIG: Okay. Let me try and respond. First,  
20 the statement about the number of people with expertise was  
21 itself derived from the assumption that the relevant popula-  
22 tion of which those with expertise is apart is cabined by the  
23 population of people who are KFUD listeners. Now, obviously  
24 we don't know, not having had a chance to see or clean copy or  
25 test that survey, because there was no clean copy of it,

1 whether that survey has -- it -- is, is valid or has been  
2 statistically validated. Consequently, the only way to rebut  
3 that statistical statement is with anecdotal evidence showing  
4 that, that there is, first, sufficient interest in classical  
5 music that there is this column in the largest Black paper in  
6 town.

7           Second, that from the articles that there's obvi-  
8 ously a diverse and intense interest in recognizing that those  
9 are not pure statistical concepts. Neither was the statement  
10 a pure and exact statement. And, and, and I don't think that  
11 it's, it's a matter going to admissibility that this is anec-  
12 dotal. That's a question going to weight, possibly credibil-  
13 ity, but it's for Findings to be -- it's, it's an argument for  
14 Findings.

15           JUDGE STEINBERG: I'm not persuaded by that. And  
16 I'm, I'm going to reject Exhibit No. 61.

17                               (Whereupon, the document marked for  
18 identification as NAACP Exhibit  
19 No. 61 was rejected.)

20           MR. HONIG: If I could have one moment, Your Honor?

21           JUDGE STEINBERG: Certainly.

22                               (Off the record.)

23                               (On the record.)

24           MR. HONIG: Okay. Your Honor, I'd like to move  
25 Exhibit 62 into evidence with a word of explanation, if I

1 | could?

2 | JUDGE STEINBERG: Okay.

3 | MR. HONIG: Your Honor, Exhibit 62 consists of three  
4 | issues of a magazine called Symphonium. Symphonium is a  
5 | national publication. It, it is subtitled, "For and About the  
6 | Professional African-American Symphony Musician." Again, in  
7 | looking through the exhibit there are no statistics that  
8 | appear to be there concerning the interest or participation of  
9 | blacks in classical music. These are anecdotes. They are  
10 | extensive anecdotes. The argument that was made in the mate-  
11 | rial from tab 7 of Church Exhibit 4 that I cited spoke to both  
12 | local and national availability and interest. This is the  
13 | national counterpart of the previous exhibit.

14 | And I would add, Your Honor, that I think it's fair  
15 | to say that this is basically a case that got designated  
16 | because of the Commission's apparent perception that there was  
17 | a stereotype at work here. And to the extent that this mate-  
18 | rial be admitted into evidence, it would at least allow us to  
19 | get past the stereotype somehow of Blacks are not interested  
20 | in classical music. It is offered for that purpose.

21 | JUDGE STEINBERG: Mrs. Schmeltzer?

22 | MS. SCHMELTZER: For one thing, Your Honor, that has  
23 | never been our argument, that Blacks are not interested in  
24 | classical music. We never made that argument and I don't know  
25 | why Mr. Honig assumes that we did.

1           Secondly, this, this exhibit is even less relevant  
2 to the -- than the previous document. It's also from 1993,  
3 1994. It's unrelated to St. Louis. He indicated it was a  
4 national publication. It's hearsay and it doesn't rebut  
5 anything in our case.

6           JUDGE STEINBERG: Mr. Zauner?

7           MR. ZAUNER: We join in that objection.

8           JUDGE STEINBERG: Exhibit No. 60 is rejected.

9 There's one -- did I say 60?

10          MR. HONIG: 62.

11          JUDGE STEINBERG: Yeah. I, I said -- but I said 60,  
12 didn't I?

13          MR. HONIG: 60.

14          JUDGE STEINBERG: Yeah. Let me correct that.  
15 Exhibit 62 is rejected.

16                               (Whereupon, the document marked for  
17 identification as NAACP Exhibit  
18 No. 62 was rejected.)

19          MR. HONIG: Your Honor, this might be a time to ask  
20 for a clarification on use of sources from which official  
21 notice would be requested. Different -- I've found different  
22 judges have different feelings about this.

23          JUDGE STEINBERG: Let me tell you, let me tell you  
24 my feelings about official notice. My feelings about official  
25 notice were expressed in my order establishing dates in this

1 proceeding, which was issued after the initial Prehearing  
2 Conference, and I am referring to FCC 94M-174, released March  
3 18, 1994, at footnote 1, "If official notice is requested of  
4 any materials in the Commission's files, that material should  
5 be assembled in written form, properly identified by source,  
6 given an exhibit number, and exchanged on the date set." That  
7 is my position on official notice.

8 MR. HONIG: So that I won't mis-- or no one will  
9 commit a misstep in our Findings, often a matter which can  
10 sometimes be referred to as secondary sources are cited. For  
11 example, articles in scholarly journals and perhaps less --  
12 tertiary sources might be articles in popular magazines. And  
13 it -- I was sort of -- to be honest with you --

14 JUDGE STEINBERG: Okay. Well, that -- you're not --  
15 those aren't, those aren't official notice materials from the  
16 Commission's files.

17 MR. HONIG: The, the reason I'm -- my, my question,  
18 I guess, is I was uncertain whether to offer material such as  
19 that in 61 and 62 as, as exhibits in the case or simply cite  
20 them as, as publications in general circulation as I would  
21 cite Time Magazine, for example, in Findings. And I, I  
22 thought it was better, since these are not -- they're widely  
23 circulated but they're not something that everyone can get out  
24 of Martin Luther King Library to distribute them. Does the  
25 fact that they have been rejected as exhibits prohibit their

1 citation as, as sources, much as you would cite a popular  
2 magazine?

3 JUDGE STEINBERG: I would think so.

4 MR. HONIG: Okay.

5 JUDGE STEINBERG: Let me, let me, let me just say  
6 that -- does anybody disa-- well, anybody disagree with that?

7 MS. SCHMELTZER: Well, I don't know what he's  
8 proposing to cite.

9 JUDGE STEINBERG: Okay. Here's what we'll do.

10 MS. SCHMELTZER: Or in what magazine.

11 JUDGE STEINBERG: Here's what we'll do. If you cite  
12 something and request that official -- like an article, this  
13 -- and request that official notice be taken of it, attach it.

14 MR. HONIG: Okay.

15 JUDGE STEINBERG: So that everybody can, so that  
16 everybody can -- doesn't, doesn't have to go looking for it.  
17 Even if it is something that's readily available like Time  
18 Magazine --

19 MR. HONIG: Journal of Broadcasting, an article --

20 JUDGE STEINBERG: Whatever.

21 MR. HONIG: The same thing?

22 JUDGE STEINBERG: You know, whatever -- I don't have  
23 Journal of Broadcasting and I'm not going to schlep off to the  
24 library to get it.

25 MR. HONIG: Okay.

1 JUDGE STEINBERG: Schlep being a -- you can spell it  
2 any which way you want.

3 MR. HONIG: S C H L E P.

4 JUDGE STEINBERG: But these particular documents --  
5 or, or exchanged and offered and rejected -- I would think  
6 that any reference to them would be, would be of the nature of  
7 a request for reconsideration of my ruling, and under 1.106,  
8 reconsideration of interlocutory rulings will not be enter-  
9 tained and, and I would rule appropriately.

10 MR. HONIG: Can I withdraw them and then cite them?

11 JUDGE STEINBERG: No. Clever, but no.

12 MR. HONIG: The first clever thing I've done.

13 JUDGE STEINBERG: No, it's not.

14 MS. SCHMELTZER: Your Honor, I, I would just hope --

15 JUDGE STEINBERG: Okay. Let's -- but, but what I'm  
16 saying is for everyone's convenience if you use something  
17 that's of that nature, attach it.

18 MR. HONIG: Okay.

19 MS. SCHMELTZER: Your Honor, I just think it's  
20 terribly unfair and burdensome to this record to dump in  
21 irrelevant hearsay information that has no relationship to  
22 this case, and that appears to be what Mr. Honig is --

23 JUDGE STEINBERG: Okay. Let's --

24 MS. SCHMELTZER: -- proposing to do.

25 JUDGE STEINBERG: Well, he just wants a

1 clarification. He got the clarification. One exhibit left,  
2 No. 60. That's your, that's your --

3 MR. HONIG: Right.

4 JUDGE STEINBERG: And I -- my understanding was you  
5 were going to forget about this and --

6 MR. HONIG: Well, I, I've thought about it and I  
7 understand the objection that has been articulated to apply to  
8 page 2 of the exhibit, and therefore I would like to withdraw  
9 -- or, or not offer page 2 of the exhibit because it's not  
10 clear that the list of, of clients represents clients with  
11 whom there was a contract and it represents some perhaps  
12 potential clients that were not --

13 JUDGE STEINBERG: Okay. Let me, let me, let me  
14 refresh -- you derive -- page 1 was derived from the footnote  
15 that Ms. Cranberg testified about?

16 MR. HONIG: And, and some material that was ex-  
17 changed in discovery.

18 JUDGE STEINBERG: Okay.

19 MR. HONIG: And the purpose of 1 and 2 are  
20 different.

21 JUDGE STEINBERG: Page 1 and page 2?

22 MR. HONIG: Yeah.

23 JUDGE STEINBERG: Okay. Page 2 is withdrawn?

24 MR. HONIG: That, that's right.

25 JUDGE STEINBERG: Okay.

1 MR. HONIG: So --

2 JUDGE STEINBERG: Forget about page 2.

3 MR. HONIG: Forget page 2. Page 1 had a different  
4 purpose. There was an argument made in that footnote in tab 7  
5 of Exhibit 4, I think it was -- and I'll find the footnote,  
6 where there was a partial list --

7 JUDGE STEINBERG: Correct.

8 MR. HONIG: -- and, and so forth. And the argument  
9 was made that, that, that servicing these accounts required  
10 individuals with classical music expertise. So, I thought it  
11 would be good to look up the accounts and to whom they were  
12 assigned, since there's been a good deal of testimony from  
13 witnesses on both sides as to who among these Sales people  
14 actually had classical music expertise. And what I've done is  
15 develop a table that shows these, and it's not intended to be  
16 exhaustive of every classical music related client, but only  
17 the ones that were listed in the footnote, which is a lot of  
18 them, and --

19 JUDGE STEINBERG: There were 24 by my count.

20 MR. HONIG: Yeah. And for those for which in --  
21 apparently that -- since the -- some of them didn't have a --  
22 an account executive corresponding to them at the, at the  
23 photograph in time which is the -- for which the -- which is  
24 May, I think, 1989 for which the exhibits that were exchanged  
25 in discovery apply, but most or about half of them I think did

1 have one or more Sales people associated with them. I've  
2 included the document page references to permit verification.  
3 I can tell you we did go blue in the face figuring it out.  
4 And that will permit both Parties -- all Parties to make  
5 Findings concerning which Sales people had classical music  
6 expertise and serviced these classical related accounts, and  
7 it's offered for that purpose and only for that purpose.

8 MS. SCHMELTZER: Your Honor --

9 JUDGE STEINBERG: Let me, let me --

10 MS. SCHMELTZER: -- this is --

11 JUDGE STEINBERG: Wait.

12 MS. SCHMELTZER: -- not a complete list.

13 JUDGE STEINBERG: Wait. Let me tell you the problem  
14 with that argument. Number one, we don't know for sure who  
15 had and who hadn't -- who had and who didn't have classical  
16 music -- not expertise, knowledge. Let's use the word  
17 knowledge in the generic way that I used it earlier.

18 We had a statement -- you went through with Mr. -- I  
19 think it was Mr. Stortz with resumes to refresh his recol-  
20 lection, and he testified that some people had the knowledge,  
21 some people didn't. We don't know if his recollection is  
22 accurate. That's number one. That's -- but that's not as  
23 important as number two.

24 Number two is the testimony was, and I think I'm  
25 right on this, that to the extent that the station could, it

1 | hired Sales people with classical music expertise. If it  
2 | couldn't, then it hired -- and now I'm using the word exper-  
3 | tise -- classical music knowledge. If it couldn't, then it  
4 | hired people without such knowledge. So, the fact that Lucy  
5 | Walker, for example, was, was assigned the account for the  
6 | School of the Arts and Lucy Walker did have classical music  
7 | expertise, well, maybe she was available at the time they was  
8 | hiring -- that they were hiring. But maybe Lucy Walker didn't  
9 | have classical music expertise and they couldn't find someone  
10 | with -- now I'm using expertise over -- you know what I mean  
11 | -- classical music knowledge, then they hired her because she  
12 | was the best-qualified without that knowledge. So, I don't  
13 | think --

14 |           You know, without tons and tons of testimony with  
15 | respect to each of these individuals, why they were assigned  
16 | to this account, was anybody available with classical music  
17 | knowledge that they could have hired and questions of that  
18 | nature, I don't think this is probative.

19 |           Now, let me, let me -- with that comment, I want to  
20 | hear from Ms. Schmeltzer and Mr. Zauner, then I'll let you  
21 | respond and I'll rule.

22 |           MS. SCHMELTZER: That -- Your Honor, we agree with,  
23 | with the reasoning that you just expressed. In addition, Ms.  
24 | Cranberg, to the extent that she spoke about that footnote,  
25 | indicated that, that that was a partial listing, and so this

1 is not a complete exhibit in any event.

2 JUDGE STEINBERG: Mr. Zauner?

3 MR. ZAUNER: One second, Your Honor.

4 MS. SCHMELTZER: And there's no competent witness  
5 for this exhibit.

6 MR. ZAUNER: Do you know where that footnote is that  
7 --

8 MR. GOTTFRIED: Yeah. The handwritten page 15 of  
9 Bureau Exhibit 14.

10 MR. ZAUNER: Your Honor, Your Honor, I'm not going  
11 to object to the admission of the exhibit. It seems to me as  
12 I view page 15 of Mass Media Bureau Exhibit 14 that this list  
13 tends to rebut the showing made there, namely that the clients  
14 are more apt to transact substantial business with KFUD-FM  
15 with a KFUD-FM account executive assigned to a client who  
16 understands that client's business and can develop more so-  
17 phisticated marketing projects for the client based upon that  
18 knowledge. And then there's a footnote to that, and that  
19 footnote then gives a number of classical -- a number of  
20 KFUD-FM's clients with a link to classical music, and that  
21 footnote relates to the statement that I just read. And the  
22 suggestion there is that the Sales people who were assigned  
23 these accounts had the classical music knowledge necessary to  
24 service those accounts.

25 This exhibit, as I see it, tends to rebut that

1 assertion. Now, it may not be dispositive of, of the ques-  
2 tion. The weight that we give this may be, may be slight for  
3 the reasons that Your Honor has suggested, but I still think  
4 that there is some relevance to the exhibit.

5 MS. SCHMELTZER: Your Honor, that is not a -- that  
6 footnote is not a material issue in this proceeding. It is a  
7 -- an extremely peripheral matter. If we're going to get it  
8 into rebutting every little footnote, this case will go on  
9 forever. Furthermore, I think it's incumbent on Mr. Honig to  
10 produce a competent witness. We do not have a competent  
11 witness to sponsor this exhibit.

12 MR. GOTTFRIED: Your Honor, this is not --

13 MR. ZARAGOZA: More testimony.

14 MR. GOTTFRIED: -- testimony, Your Honor.

15 MR. HONIG: Your Honor, if --

16 MR. ZARAGOZA: Isn't that the fundamental point?  
17 Basically pleading.

18 JUDGE STEINBERG: Wait, wait, wait.

19 MR. HONIG: If, if I may?

20 JUDGE STEINBERG: Let, let Mr. Honig respond and  
21 then I'll rule.

22 MR. HONIG: First, Your Honor, we do have a, a  
23 declaration which has been admitted, and it is the first Jan  
24 Hutchinson Declaration which I believe is NAACP Exhibit 7,  
25 which states that at least one of the people on this list, Tom